

IN THE MATTER OF:

SUNNYMTG.COM 866-768-CASH, LLC,

Respondent.

**BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION**

Case No.: DFR-FY2010-325

**SUMMARY ORDER TO CEASE AND DESIST AND
SUMMARY SUSPENSION OF RESPONDENT'S MARYLAND
MORTGAGE LENDER LICENSE, AND ORDER TO PRODUCE**

WHEREAS, the Commissioner of Financial Regulation (the "Commissioner") undertook an investigation into the mortgage lending business activities of Sunnymtg.com 866-768-CASH, LLC (the "Respondent"); and

WHEREAS, as a result of that investigation, the Commissioner finds grounds to allege that Respondent violated Title 11, Subtitle 5 of the Financial Institutions Article ("FI"), Annotated Code of Maryland (the Maryland Mortgage Lender Law, or "MMLL"), Title 11, Subtitle 6 of the Financial Institutions Article, Annotated Code of Maryland (the Maryland Mortgage Originators Law, or "MMOL"), and Title 12, Subtitle 8 of the Commercial Law Article ("CL"), Annotated Code of Maryland (the Maryland Finder's Fee Law, or "MFFL"), and the Commissioner finds that action under FI §§ 2-114, 2-115, and 11-517, and State Government Article ("SG"), Annotated Code of Maryland, § 10-226(c)(2), is appropriate.

NOW, THEREFORE, the Commissioner has determined, for the reasons set forth below, that the Respondent is in violation of Maryland law, and that the public welfare imperatively requires that Respondent's Maryland Mortgage Lenders License be

immediately suspended; and that it is in the public interest that the Respondent immediately cease and desist from originating, brokering, lending, mitigating, or engaging in any other activities involving Maryland mortgage loans or otherwise pertaining to the mortgage industry in Maryland.

1. FI § 11-501, provides the following definitions:

- (i) *Mortgage broker.* – “Mortgage broker” means a person who:
 - (1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a mortgage loan; and
 - (2) Is not named as a lender in the agreement, note, deed of trust, or other evidence of the indebtedness.
- (j) *Mortgage lender.* –
 - (1) “Mortgage lender” means any person who:
 - (i) Is a mortgage broker;
 - (ii) Makes a mortgage loan to any person; or
 - (iii) Is a mortgage servicer.
- * * *
- (k) *Mortgage lending business.* –
 - (1) “Mortgage lending business” means the activities set forth in the definition of “mortgage lender” in subsection (j) of this section which require that person to be licensed under this subtitle.
 - (2) “Mortgage lending business” includes the making or procuring of mortgage loans secured by a dwelling or residential real estate located outside Maryland.

2. FI § 11-515 requires that the Commissioner examine the business of each licensed Maryland mortgage lender, and as a result of that examination the licensee “shall pay to the Commissioner a per-day fee set by the Commissioner for each of the Commissioner’s employees engaged in . . . [that examination]” and “[a]ny other examination or investigation conducted under [FI § 11-515] . . . that the Commissioner reasonably considers necessary.” Code of Maryland Regulations (“COMAR”) 09.03.06.23(D) provides that, “[t]he fee for each of the Commissioner’s employees engaged in examinations or

investigations performed by the Commissioner as authorized by Financial Institutions Article, §11-515(c), Annotated Code of Maryland, is \$250 per day.”

3. Pursuant to FI § 11-517(a), the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee engage, in part, in the following:

* * *

(3) In connection with any mortgage loan or loan application transaction:

- (i) Commits any fraud;
- (ii) Engages in any illegal or dishonest activities; or
- (iii) Misrepresents or fails to disclose any material facts to anyone entitled to that information;

* * *

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

4. Additionally, pursuant to FI § 11-517(c), the Commissioner may enforce the provisions of the MMLL, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of the MMLL and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation. Additionally, the Commissioner may impose a civil penalty not exceeding \$5,000 for each violation, as well as \$5,000 for each subsequent violation.

5. FI § 11-523 provides additional penalties for violations of the MMLL, as follows:

(a) *Willful violations.* – Any person who willfully violates any provision of this subtitle or any rule or regulation adopted under it is guilty of a felony and on conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 10 years or both.

(b) *Unlicensed persons.* – Any unlicensed person who is not exempt from licensing under this subtitle who makes or assists a borrower in obtaining a mortgage loan in violation of this subtitle may collect only the principal amount of the loan and may not collect any interest, costs, finder's fees, broker fees, or other charges with respect to the loan.

(c) *Misappropriation or conversion; penalty.* – Any mortgage lender or employee or agent of a mortgage lender who willfully misappropriates or intentionally and fraudulently converts to the mortgage lender's or to the mortgage lender's employee's or agent's own use moneys in excess of \$300 rightfully belonging to a borrower, or who otherwise commits any fraudulent act in the course of engaging in the mortgage lending business is guilty of a felony and on conviction is subject to a fine not to exceed \$100,000 or imprisonment not exceeding 15 years or both.

6. COMAR 09.03.06.04(B)(1) provides that for each mortgage loan made or serviced by a licensee, the licensee is required to maintain a file which contains, in part, the following:

* * *

(n) Records indicating that the services were provided and the fees paid by the licensee to the third party;

* * *

(p) Any other document on which the licensee relied in underwriting the loan;

7. In addition, COMAR 09.03.06.03(B) provides as follows: “[a] licensee may not broker a loan to, or accept a loan referral from, a person the licensee knows is not licensed by the Commissioner, unless the licensee reasonably and in good faith believes that the person is properly licensed or exempt from the licensing requirement.”

8. Pursuant to COMAR 09.03.06.20(A), the Commissioner has promulgated a good faith and fair dealing requirement upon each and every mortgage lender, which states in part: “[a] licensee has a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan . . .”

9. Pursuant to FI § 11-601(q), “mortgage loan originator” is defined as follows:

- (1) “Mortgage loan originator” means an individual who for compensation or gain, or in the expectation of compensation or gain:
 - (i) Takes a loan application; or
 - (ii) Offers or negotiates terms of a mortgage loan.
- (2) “Mortgage loan originator” does not include an individual who:
 - (i) Acts solely as a mortgage loan processor or underwriter;
 - (ii) Performs only real estate brokerage activities and is licensed in accordance with Title 17 of the Business Occupations and Professions Article, unless the individual is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator; or
 - (iii) Is involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53d).

10. Pursuant to FI § 11-602(b), “[u]nless exempted from this subtitle under subsection (d) of this section, an individual may not engage in the business of a mortgage loan originator unless the individual holds a valid license issued under this subtitle.” In addition, pursuant to FI § 11-603(b), for a “licensee to act as a mortgage loan originator,” he/she must be, “acting within the scope of employment with . . . (1) [a] mortgage lender . . . or (2) [a] person who is exempt from licensing as a mortgage lender.

11. Pursuant to FI § 11-615(a) and the provisions described therein, the Commissioner may suspend or revoke the license of any Maryland mortgage loan originator. In addition, pursuant to FI § 11-615(c), the Commissioner may enforce the provisions of the MMOL, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of the MMOL and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation.

Additionally, the Commissioner may impose a civil penalty not exceeding \$5,000 for each violation, as well as \$5,000 for each subsequent violation.

12. Pursuant to FI § 11-617, “[a]ny person who willfully violates the provisions of this subtitle is guilty of a felony and, on conviction, is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 5 years or both.”

13. Pursuant COMAR 09.03.09.04(A), the Commissioner has promulgated a good faith and fair dealing requirement upon each and every mortgage loan originator, which states in part: “[a] mortgage originator has a duty of good faith and fair dealing in communications and transactions with a borrower. . . .”

14. Pursuant to CL § 12-801(c), a finder’s fee is defined as “any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker’s services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money.” A mortgage broker may not charge a finder’s fee greater than 8 percent of the amount of the loan or advance. *See* CL § 12-804(a). Further, pursuant to CL § 12-805(d), a finder’s fee may not be charged unless it is provided in a written agreement between the mortgage broker and the borrower, which is separate and distinct from any other document, is disclosed to the Borrower within 10 business days after completion of the loan application, specifies the amount of the finder’s fee, and contains a representation that the mortgage broker is acting as a broker and not as a lender in the transaction. In addition, “[i]f the finder’s fee is paid from the proceeds of the loan, the lender shall comply with the disclosure provisions of § 12-106 of this article or the federal Truth in Lending Act and . . . shall advise . . . , in writing, of the borrower’s right to a refund of the finder’s fee upon the exercise of any right of rescission of the loan.” *See* CL § 12-

805(c). Failure to fully comply with the MFFL shall result in the mortgage broker forfeiting to the borrower the greater of three times the amount of the finder's fee collected or \$500.

See CL § 12-807.

15. FI §§ 2-115(a) and (b) set forth the Commissioner's general authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (in addition to taking any other action permitted by law, and subject to a hearing or waiver of hearing), providing as follows:

(a) *Summary cease and desist orders.*— When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:

- (1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and
- (2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.

(b) *Other authorized actions for violations.*— When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.

16. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (which is in addition to the Commissioner's specific investigatory authority set forth in various other Maryland statutes and regulations). Thus, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire ... a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, ". . . take evidence, and require the production of books, papers, correspondence, memoranda, and agreements, or other documents or records. . . ."

17. Pursuant to SG § 10-226(c)(2), the Commissioner may enter an order summarily suspending a license if she:

- (i) finds that the public health, safety, or welfare imperatively requires emergency action; and
- (ii) promptly gives the licensee:
 - 1. written notice of the suspension, the finding, and the reasons that support the finding; and
 - 2. an opportunity to be heard.

18. In the present matter, the Commissioner conducted an examination of the Respondent during May 2009, as required by FI § 11-515(a). As a result of this examination, the Commissioner issued Examiner's Findings determining that the Respondent was in violation of the following:

a. of the sample set of Maryland loan files provided by the Respondent in response to the Commissioner's examination, in several instances Vaughn Douglas

originated loans on behalf of the Respondent. At all times relevant to the alleged conduct described herein, although Mr. Douglas was licensed as a Maryland mortgage loan originator, he was not properly licensed in connection with his employment by the Respondent, and his conduct on behalf of the Respondent constitutes a violation of FI § 11-603 and COMAR 09.03.06.03(B).

b. of the sample set of Maryland loan files provided by the Respondent in response to the Commissioner's examination, in several instances Amos Warindu and Bill Laupert originated loans on behalf of the Respondent. Mr. Warindu and Mr. Laupert were not licensed Maryland mortgage loan originators, and their conduct on behalf of the Respondent constitutes a violation of FI § 11-604 (subsequently amended) and COMAR 09.03.06.03(B).

c. of the sample set of Maryland loan files provided by the Respondent in response to the Commissioner's examination, in four instances the Broker Agreements list finder's fees in excess of 8%, which constitutes a violation of CL § 12-804(a).

d. of the sample set of Maryland loan files provided by the Respondent in response to the Commissioner's examination, in three instances the Broker Agreements were not provided within 10 days of completion of the loan application, which constitutes a violation of CL § 12-805(d).

e. the sample Broker Agreement provided by the Respondent in response to the Commissioner's examination, does not advise the borrower, in writing, of his/her right to a refund of the finder's fee upon the exercise of any right of recession of the loan, which constitutes a violation of CL § 12-805(c).

f. of the sample set of Maryland loan files provided by the Respondent in response to the Commissioner's examination, in four instances the appraisal documents were missing from the respective loan file, which constitutes a violation of COMAR 09.03.06.04(B)(1)(p).

g. of the sample set of Maryland loan files provided by the Respondent in response to the Commissioner's examination, in two instances the invoice documents demonstrating that third party processing services were provided were missing from the respective loan file, which constitutes a violation of COMAR 09.03.06.04(B)(1)(n).

19. In addition, on May 15, 2008, the Respondent was issued a Notice of Intent to Revoke Annual License by the Georgia Department of Banking and Finance. That same day, the Georgia Department of Banking and Finance also issued an Order to Cease and Desist against Respondent's president, Sumit Gaddh. As a basis for these actions, it was alleged, in part, that the Respondent was employing felons, employed a person whom a final order to cease and desist had been issued against that person within the past three years, and employed and/or transacted business with persons who are unlicensed and unregistered as mortgage lenders or mortgage brokers. The Respondent, along with Mr. Gaddh, settled this matter, agreeing to surrender its license and to a permanent moratorium preventing the Respondent from ever applying for a mortgage broker or lender license in the State of Georgia. As part of that settlement, Mr. Gaddh agreed that the Order to Cease and Desist would become a final order of the Georgia Department of Banking and Finance. The Respondent's conduct with regard to the allegations raised in the Notice of Intent to Revoke Annual License and the Order to Cease and Desist, along with the provisions of the settlement, indicate that the Respondent has engaged in illegal and/or dishonest activities

with regard to its mortgage lending and brokering business, and that the business of the Respondent has not been and will not be conducted honestly, fairly, equitably, and efficiently.

20. Further, the Respondent has failed to pay the Commissioner the mandatory examination fees set forth in FI § 11-515(c) and COMAR 09.03.06.23, despite the fact that the Commissioner sent the Respondent several correspondence requesting such payment.

21. At all times relevant to the alleged conduct described herein, the Respondent has been duly licensed by the Commissioner as a Maryland mortgage lender (License No.: 06-15916). The Commissioner issued the Respondent a mortgage lender license on October 5, 2006, which has been renewed on several occasions, and is set to expire on October 5, 2010.

22. Further, the Respondent currently has zero (0) registered licensed Maryland mortgage loan originators acting within the scope of employment of the Respondent.

23. The Respondent is an active Florida limited liability company with primary offices located at 1910 East Oakland Park Blvd., Suite C, Fort Lauderdale, Florida 33306.

24. Based on the foregoing, it has been determined that the Respondent is in violation of Maryland law, including, but not limited to, the MMLL, MMOL, and MFFL, and corresponding regulations, and accordingly, administrative action is appropriate.

WHEREFORE, having determined that immediate action is warranted, and that it is in the public welfare and overall interest that such action be taken, and pursuant to the aforementioned provisions of the Annotated Code of Maryland and associated regulations, it is, by the Maryland Commissioner of Financial Regulation, **HEREBY**

ORDERED that the Respondent's Maryland Mortgage Lender License is **SUMMARILY SUSPENDED** effective immediately; and it is

ORDERED that the Respondent, and its owners, directors, officers, members, partners, stockholders, employees, and/or agents, shall immediately **CEASE** and **DESIST** from engaging in any of the following: any and all activities which constitute a mortgage lending business as defined in FI § 11-501(k), including acting as a mortgage broker as defined under FI § 11-501(i) or as a mortgage lender as defined under FI § 11-501(j); acting as a mortgage loan originator as defined in FI § 11-601(q); or in any other way acting as a mortgage lender, broker, or originator in the State of Maryland or with Maryland residents, either by acting directly, or by acting indirectly through other individuals or business entities; and it is

ORDERED that Respondent shall immediately **CEASE** and **DESIST** from violating the aforementioned statutory provisions of Maryland law, including, but not limited to the MMLL, MMOL and MFFL; and that the Respondent should be assessed statutory monetary penalties and ordered to provide restitution for such violations; and it is further

ORDERED that the Respondent shall provide to the Commissioner each of the following within 15 days of the receipt of this Order:

- **The names, addresses, and phone numbers of all Maryland residents, homeowners and/or consumers** (hereinafter "Maryland residents") who, at any time on or after January 1, 2007, retained or contracted with the Respondent, or contracted with another person with whom the Respondent worked or was affiliated, for the purpose (in whole or in part) of providing mortgage loan origination and/or mortgage brokering services for them or on their behalf related to Maryland residential real property.

- **Any and all documents under Respondent's control or in its possession** pertaining to mortgage loan origination and/or mortgage brokering services and activities on or after January 1, 2007, related to Maryland residential real property, or otherwise involving Maryland consumers.
- **The names, addresses, and phone numbers of third-party individuals or business entities** ("third parties") who, at any time on or after January 1, 2007, referred or agreed to refer consumers to the Respondent for the purpose (in whole or in part) of providing mortgage loan origination and/or mortgage brokering services related to Maryland residential real property.
- **The names, addresses, and phone numbers of third-parties** to whom, at any time on or after January 1, 2007, the Respondent referred or agreed to refer consumers for the purpose (in whole or in part) of providing mortgage loan origination and/or mortgage brokering services related to Maryland residential real property.
- **Any and all documents under Respondent's control or in his possession pertaining to the third-parties** identified above, the content of which documents relates in any way to mortgage loan origination and/or mortgage brokering services to be performed on or after January 1, 2007, or to any associated referral arrangements, fees, or other forms of compensation.
- **Copies of all marketing and advertising materials** potentially reaching Maryland consumers on or after January 1, 2007, which the Respondent, or which third parties marketing directly or indirectly on Respondent's behalf, use or have used to market or advertise Respondent's mortgage loan origination and/or mortgage brokering services related to Maryland residential real property, including, but not limited to, copies of all printed marketing materials, internet advertisements, and radio and television advertisements.

FURTHERMORE,

THE RESPONDENT IS HEREBY NOTIFIED that a hearing in this case will automatically be scheduled and the Respondent will receive a Notice of Hearing under separate cover. If for any reason a hearing is not automatically scheduled, the Respondent may request a hearing by submitting a written request to:

Jessica Wiener, Administrator
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202

And further,

THE RESPONDENT IS HEREBY NOTIFIED that at the scheduled hearing the Respondent will be afforded the opportunity to defend against the charges set forth herein. The hearing will be conducted pursuant to FI § 11-518, SG § 10-201, *et seq.* (the “Administrative Procedure Act”), and COMAR §§ 09.01.02 and 03. A copy of the hearing procedure is available to you upon request and without cost to you; and further

THE RESPONDENT IS HEREBY NOTIFIED that pursuant SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are **ONLY** permitted to appear at such hearing through an attorney authorized to practice law in Maryland at the Respondent’s own expense. In any event, no postponement will be granted by reason of the Respondent’s failure to obtain counsel. COMAR § 09.01.02.10. The Respondent may subpoena and call witnesses. COMAR § 09.01.02.12. The Respondent may cross-examine those witnesses called against The Respondent. COMAR § 09.01.02.13. Further, The Respondent is entitled to introduce documentary evidence in its defense. COMAR § 09.01.02.14. If the Respondent fails to appear at the scheduled hearing, the hearing may proceed in the Respondent’s absence and a determination may be made regarding the validity of the charges. COMAR § 09.01.02.09; and further

THE RESPONDENT IS HEREBY NOTIFIED that a request for a postponement of the scheduled hearing will not be considered unless written notification is given no later than ten (10) days prior to the hearing date, pursuant to COMAR § 09.01.02.10. Any questions about hearing procedures, requests for postponement, or requests for subpoenas should be directed to Jessica Wiener, Administrator, at the address set forth above; and further

THE RESPONDENT IS HEREBY NOTIFIED that any questions regarding the substance of this case or settlement negotiations should be directed to the presenter of evidence assigned to this case:

Jedd Bellman, Staff Attorney
Office of the Attorney General
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202.

And further,

THE RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI §§ 11-517 and 2-115(b), as a result of a hearing the Commissioner may, in the Commissioner's discretion, and in addition to taking any other action authorized by law, take the following actions: enter an order suspending or revoking the Respondent's Maryland Mortgage Lender License; enter an order making this Order to Cease and Desist final; issue an order requiring that the Respondent refund all interest, costs, originator fees, broker fees, and/or other charges paid by Maryland consumers to the Respondent, or its agents, in conjunction with residential mortgage loans that were originated, brokered, or closed in violation of Maryland law; issue a penalty order against the Respondent imposing a civil penalty up to \$5,000 for each violation of the MMLL; issue a penalty order against the Respondent imposing a civil penalty up to \$5,000 for each subsequent violation of these laws; or may take any combination of the aforementioned actions against the Respondent. Additionally,

pursuant to CL § 12-807, in each instance in which the Respondent failed to fully comply with the requirements imposed under the MFFL, the Commissioner may enter an order directing the Respondent to forfeit to each respective borrower the greater of three times the amount of the finder's fee collected or \$500.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

4/22/10
Date


By: Mark Kaufman
Deputy Commissioner